

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D.C. 20548

10,608

FILE: B-193472

DATE: June 28, 1979

MATTER OF:

Mrs. Susan E. O'Neill Speed

DIGEST:

A deceased Navy officer's widow was receiving a reduced Survivor Benefit Plan (SBP) annuity because she was also entitled to Veterans Administration Dependency and Indemnity Compensation (DIC). She remarried in 1977 after reaching age 60 and thereby lost entitlement to DIC. Under the new provisions of 10 U.S.C.1450(k), added by § 203 of Public Law 95-397, the full SBP annuity may be restored to her upon repayment of retired pay contributions she received when the SBP annuity was reduced. However, under § 210(a) of Public Law 95-397, the full annuity may not be paid for months prior to October 1, 1978.

Account

This ^{ING} case interprets a new statute ^{concerning SBP and DIC} that would allow certain surviving spouses whose Survivor Benefit Plan (SBP) annuities have been reduced due to their entitlement to Veterans Administration (VA) Dependency and Indemnity Compensation (DIC), to have their SBP annuities reinstated in full upon loss of entitlement to DIC due to their remarriage. We hold that, while the new provision authorizes the reinstatement of the full annuity upon repayment by the spouse of retired pay refunds received when the annuity was reduced, payment of the full annuity may be made only for months beginning on or after October 1, 1978.

The specific case in question is a request for reconsideration of our Claims Division's settlement and the Navy's action concerning Mrs. Susan E. O'Neill Speed's SBP annuity entitlement as the former spouse of Rear Admiral Edward J. O'Neill, USN (Retired) (Deceased). The request was presented in letters dated March 2 and May 7, 1979, from Mrs. Speed's attorney, John E. O'Neill, Esq.

Admiral O'Neill retired from the Navy in 1957 and participated in the Uniformed Services Contingency Option Act

005730

B-193472

survivor protection program, later renamed the ^x Retired Serviceman's Family Protection Plan (RSFPP). 10 U.S.C. 1431-1446. As required by 10 U.S.C. 1431 and 1436, Admiral O'Neill's retired pay was reduced to cover the cost of his participation in those plans.

In 1973 Admiral O'Neill elected to participate in the new SBP to provide an annuity for his spouse at 55 percent of his retired pay, and he cancelled his participation in the RSFPP. This action was authorized by section 3(b), Public Law 92-425, September 21, 1972, 86 Stat. 711 (10 U.S.C. 1448, note). Appropriate deductions were made from his retired pay for the SBP coverage.

In 1975 Admiral O'Neill died, apparently from service-connected causes. His widow, Mrs. Susan E. O'Neill, who was entitled to a full SBP annuity--55 percent of Admiral O'Neill's retired pay--instead was paid a reduced annuity as required by 10 U.S.C. 1450(c) because she was also entitled to DIC from the VA under 38 U.S.C. 411(a). As required by 10 U.S.C. 1450(e) in such a case, the cost of the reduced SBP coverage was calculated and the excess amount which had been deducted from Admiral O'Neill's retired pay for the full SBP coverage was credited to his widow.

On January 29, 1977, Mrs. O'Neill who at that time was over age 60, remarried. As a result, her DIC entitlement was terminated. However, under 10 U.S.C. 1450(b), since Mrs. O'Neill, now Mrs. Speed, remarried after reaching age 60, her eligibility for the SBP annuity was not lost. Since she was no longer receiving DIC, she asked that her SBP annuity be restored to the full amount and offered to repay the refund of retired pay deductions she had received. She also requested payment of all amounts deducted from Admiral O'Neill's retired pay for RSFPP coverage.

Mrs. Speed was found to be entitled to receive the SBP annuity only in the reduced amount. That determination was based on our decision B-181712, April 7, 1975, 54 Comp. Gen. 838, where we noted that unlike the Civil Service

survivor annuity plan, under the SBP there was no statutory authority to permit a spouse to repay an amount previously refunded and have the annuity reinstated at the higher level. Therefore, we held that once an SBP annuity was reduced due to DIC entitlement and the deductions refunded to spouse, the reduction was permanent and the full annuity could not be reinstated upon repayment by the spouse of the refunded deductions.

Mrs. Speed's claim for all amounts deducted from Admiral O'Neill's retired pay for RSFPP coverage was denied. That denial was based on section 3(b) of Public Law 92-425 which authorized retired members, such as Admiral O'Neill, to terminate their RSFPP participation and instead participate in the SBP, but specifically provided that, in such cases, the member was not entitled to refund of the deductions in retired pay made for RSFPP coverage.

In his May 7, 1979 letter Mrs. Speed's attorney refers to 10 U.S.C. 1450(k) and asks that it be applied in her case to allow her to repay the refund of retired pay deductions she received and have the full SBP annuity reinstated effective beginning with the date of her loss of DIC entitlement upon her January 29, 1977 remarriage. Section 1450(k) was added by section 203 of the Uniformed Services Survivors' Benefits Amendments of 1978, Public Law 95-397, September 30, 1978, 92 Stat. 843, 846, and provides as follows:

"(k) If a widow or widower whose annuity has been adjusted under subsection (c) subsequently loses entitlement to compensation under section 411(a) of title 38 because of the remarriage of such widow or widower, and if at the time of such remarriage such widow or widower is 60 years of age or more, the amount of the annuity of such widow or widower shall be readjusted, effective on the effective date of such loss of compensation, to the amount of the annuity which would be in effect with respect to such widow or widower if the

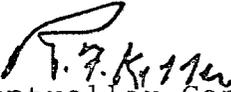
B-193472

adjustment under subsection (c) had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c)."

That provision, which was not in effect when our April 7, 1975 decision was rendered, now authorizes widows or widowers in Mrs. Speed's situation to repay the retired pay refund received and have their full SBP annuities reinstated upon loss of DIC entitlement. However, section 210(a) of Public Law 95-397 limits the retroactive effect of various amendments made by that law, including 10 U.S.C. 1450(k), to October 1, 1978, as follows:

"* * * the provisions of this title and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act, whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date."

Therefore, under the newly added 10 U.S.C. 1450(k), Mrs. Speed may now repay the refund she received and have her SBP annuity readjusted to the full annuity. However, under section 210(a) above she is entitled to be paid the full annuity only for months beginning on October 1, 1978, and not for months prior to that date. Upon Mrs. Speed's repayment of the refund she received, the Navy should adjust her annuity payments accordingly.


Acting Comptroller General
of the United States